

SERVED: August 5, 2003

NTSB Order No. EA-5049

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 30th day of July, 2003

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APPLICATION OF )

JAMES LOUIS MOSHER )

For an award of attorney fees )  
and expenses under the )  
Equal Access to Justice Act )

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) Docket 300-EAJA-SE-16457  
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**OPINION AND ORDER**

Applicant, appearing now pro se, has appealed from the Equal Access to Justice Act (EAJA) initial decision of Administrative Law Judge William R. Mullins, served on November 25, 2002.<sup>1</sup> The law judge denied the application, having found that the Administrator was substantially justified in bringing and pursuing the action. We affirm the law judge's decision.

We need add little to the law judge's decision and the Administrator's reply brief. Applicant is correct that as a prevailing party, at least in part, he would qualify for some

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<sup>1</sup> The initial decision is attached.

partial collection of fees and expenses. However, and aside from the fact that he did not attempt to quantify what portion he might be due, he failed in any respect to meet the primary requirement of the EAJA statute: that is, to contradict the showing that the Administrator was substantially justified in bringing and pursuing this action.<sup>2</sup> In fact, applicant cannot make such a showing in this case.

As the Administrator noted, she had considerable eyewitness and expert testimony to support the complaint. No doubt has been raised that the Administrator's case was not reasonable in fact and reasonable in law, and we specifically find that it was. See, e.g., Federal Election Com'n v. Rose, 806 F.2d 1081 (D.C. Cir. 1986); Catskill, supra; and Application of US Jet, NTSB Order No. EA-3817 (1993). Applicant's continued attempts to reargue the merits of the case and the behavior of the Administrator's counsel have no place in the EAJA proceeding.

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<sup>2</sup> EAJA's principal purpose has been "to ensure that certain individuals, partnerships, corporations, businesses, associations, or other organizations will not be deterred from seeking review of, or defending against, unjustified governmental actions because of the expense involved in securing the vindication of their rights." H.R. Rep. No. 120, 99th Cong. 1st Sess., pt. 1, at 4, reprinted in 1985 U.S. Code Cong. & Admin. News (Vol. 2), 132-133. We have noted that the Administrator's prosecution is to be judged as a whole, and should include an assessment, as relevant, of whether there was sufficient reliable evidence initially to prosecute the matter. EAJA awards are intended to dissuade the government from pursuing "weak or tenuous" cases; the statute is intended to caution agencies carefully to evaluate their cases, not to prevent them from bringing those that have some risk. Catskill Airways, Inc., 4 NTSB 799 (1983).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Applicant's appeal is denied; and
2. The EAJA application is denied.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.